IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISIDCTIION

WRIT PETITION NO.713 OF 2006 .

Shri K.R. Bharadwaj. .. Petitioner.
V/s.
The Commissioner of Income tax & ors.... Respondents.

Mr. M.K. Kuklkarni for the petitioner.

Mr. Shiv Motariya for the respondents.

CORAM : V.C.DAGA & J.P.DEVADHAR,JJ.

DATED : 11.7 .2006.

P.C. :

. Heard.

. Rule returnable forthwith.

. Mr.Motariya waives service on behalf of the respondents.

. In this petition, petitioner is challenging the order dated 12.9.2005 passed under section 179 of the Income Tax Act, 1961 ('the Act' for short).

. Learned Counsel appearing for the petitioner submits that section 179 could not have been invoked against the petitioner, who claims to be the Director of M/s Premier Electrodes Ltd. Learned Counsel for the petitioner contends that section 179 is not applicable to the public limited companies. He has produced a certificate issued by the Addl.

Registrar of Companies, Maharashtra State, Bombay, showing change of name from Premier Electrodes Private Ltd. to Premier Electrodes Ltd. which is sufficient to indicate that the petitioner was the of a public limited company and not of a private Ltd. company.

. Per contra, learned Counsel appearing for the Revenue submits that the income tax return filed by the petitioner shows that it is a private Ltd. company and public is not substantially interested.

. Having heard rival parties, in view of the question raised by the petition, it would be necessary to set aside the impugned order and remit the matter to the Assistant Commissioner of Income-tax, Circle-1, Nashik, for consideration afresh. It would be open for the petitioner to produce additional material before the Assistant Commissioner in support of his contention and it would also be open for the adjudicating authority to adjudicate the issue in accordance with law, as expeditiously as possible.

. In the result, impugned order is set aside. The matter is remitted back to the Assistant Commissioner of Income Tax, Circle 1, Nashik to decide the notice under section 179 of the I.T. Act, as expeditiously as possible, at any rate,

within 3 months from the date of receipt of copy of this order.

. Rule is made absolute in terms of this order with no order as to costs.

(V.C.DAGA,J.)

(J.P.DEVADHAR,J.)